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8  
9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4033

13 **WINDY SUE IRBY**  
2005 Sugar Pine Dr.  
14 Oakdale, California 95361  
15 Pharmacy Technician Registration No. TCH 21312

**A C C U S A T I O N**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about January 31, 1997, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 21312 (License) to Wendy Sue Irby (Respondent). The License was  
24 in full force and effect at all times relevant to the charges brought herein and will expire on April  
25 30, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300 of the Code states, in pertinent part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

1. Suspending judgment.
2. Placing him or her upon probation.
3. Suspending his or her right to practice for a period not exceeding one year.
4. Revoking his or her license.
5. Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

....

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

5. Section 4301 of the Code states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

....

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

....

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

1 (l) The conviction of a crime substantially related to the qualifications,  
2 functions, and duties of a licensee under this chapter. The record of conviction  
3 of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the  
4 United States Code regulating controlled substances or of a violation of the  
5 statutes of this state regulating controlled substances or dangerous drugs shall  
6 be conclusive evidence of unprofessional conduct. In all other cases, the record  
7 of conviction shall be conclusive evidence only of the fact that the conviction  
8 occurred. The board may inquire into the circumstances surrounding the  
9 commission of the crime, in order to fix the degree of discipline or, in the case  
10 of a conviction not involving controlled substances or dangerous drugs, to  
11 determine if the conviction is of an offense substantially related to the  
12 qualifications, functions, and duties of a licensee under this chapter. A plea or  
13 verdict of guilty or a conviction following a plea of nolo contendere is deemed  
14 to be a conviction within the meaning of this provision. The board may take  
15 action when the time for appeal has elapsed, or the judgment of conviction has  
16 been affirmed on appeal or when an order granting probation is made  
17 suspending the imposition of sentence, irrespective of a subsequent order under  
18 Section 1203.4 of the Penal Code allowing the person to withdraw his or her  
19 plea of guilty and to enter a plea of not guilty, or setting aside the verdict of  
20 guilty, or dismissing the accusation, information, or indictment.

21 ....

#### 22 COST RECOVERY

23 6. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
24 administrative law judge to direct a licensee found to have committed a violation or violations of  
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
26 enforcement of the case.

#### 27 DISCIPLINARY CONSIDERATIONS

28 7. On or about January 28, 2009, in the Superior Court of California, County of  
Tuolumne, in the case entitled, *People of the State of California v. Windy Sue Irby* (Super. Ct.  
Tuolumne County, 2009, Case No. CRM28821), Respondent was convicted of violating Vehicle  
Code section 23152, subd. (a) [driving under the influence of a drug or alcohol], a misdemeanor.  
On or about January 19, 2010, the Board issued Respondent a Code section 4301 violation letter.

#### 29 FIRST CAUSE FOR DISCIPLINE (Conviction)

30 8. Respondent is subject to disciplinary action under Code section 4301, subd. (l) in that  
31 Respondent was convicted of a crime substantially related to her License and her practice as a  
32 pharmacy technician. The circumstances are as follows:

9. On or about October 21, 2010, in the Superior Court of California, County of Stanislaus, in the case entitled, *People of the State of California v. Windy Sue Irby* (Super. Ct. Stanislaus County, 2010, Case No. 1424483), Respondent was convicted on her plea of nolo contendere of violating Vehicle Code section 23152, subd. (b) [driving with a blood alcohol content in excess of 0.08%], a misdemeanor. The circumstances of the crime are that on or about August 16, 2010, Officer Joseph Johnson of the Oakdale Police Department was on patrol and observed a vehicle driven by Respondent roll past the limit line while approaching a stop sign at an intersection. Officer Johnson activated his overhead emergency lights and siren to stop Respondent. Officer Johnson approached Respondent's vehicle to speak with Respondent. Officer Johnson detected a strong odor of alcohol coming from inside Respondent's car. Officer Johnson asked Respondent to exit her vehicle. Officer Johnson observed the Respondent to stumble as she exited her vehicle. Respondent's speech was also slow and slurred. Respondent admitted to drinking alcohol and driving. Officer Johnson performed field sobriety tests upon Respondent. Respondent performed the tests poorly. Based upon Respondent's performance on the field sobriety tests, her statements, and Officer Johnson's observations of Respondent's signs of intoxication, Respondent was placed under arrest for violating Vehicle Code section 23152, subds. (a) [driving under the influence of alcohol] and (b) [driving with a blood alcohol content in excess of 0.08%]. Respondent submitted to a blood alcohol test and her test results were 0.30% and 0.29% blood alcohol content.

## SECOND CAUSE FOR DISCIPLINE

### (Dangerous Use of Alcohol)

10. Respondent is subject to disciplinary action under Code section 4301, subd. (h) in that Respondent committed an act involving an alcoholic beverage to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public by violating Vehicle Code section 23152, subd. (b) [driving with a blood alcohol content in excess of 0.08%]. The circumstances are detailed above in paragraph 9.

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1 THIRD CAUSE FOR DISCIPLINE  
2 (Multiple Convictions)

3 11. Respondent is subject to disciplinary action under Code section 4301, subd. (k) in that  
4 Respondent was conviction of more than one misdemeanor involving the use, consumption, or  
5 self-administration of any dangerous drug or alcoholic beverage. The circumstances are detailed  
6 above in paragraphs 7 and 9.

7 FOURTH CAUSE FOR DISCIPLINE  
8 (False Representation)

9 12. Respondent is subject to disciplinary action under Code section 4301, subd. (g) in that  
10 Respondent knowingly made or signed a certificate or other document that falsely represented the  
11 existence or nonexistence of a state of facts. The circumstances are that on or about April 27,  
12 2010, when Respondent most recently renewed her License, Respondent signed a statement under  
13 penalty of perjury that falsely represented to the Board that she had not been convicted of any  
14 crime, but the true state of facts were that Respondent had indeed been convicted on a crime as  
15 detailed above in paragraph 7.

16 PRAYER

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
18 and that following the hearing, the Board of Pharmacy issue a decision:

19 1. Revoking or suspending Pharmacy Technician Registration Number TCH 21312,  
20 issued to Windy Sue Irby.

21 2. Ordering Windy Sue Irby to pay the Board of Pharmacy the reasonable costs of the  
22 investigation and enforcement of this case, pursuant to Business and Professions Code section  
23 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED:

11/1/11

*Virginia Herold*

VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

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